Docket No. 348-123 Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:		:
Janice Ryan et al.		: Confirmation No.: 7092
Ser. No.:	10/594,184	: National Stage of PCT/GB2005/001174 : International Filing Date: 23 March 2005
For:	**ELECTRICALLY HEATED PLANT PROPAGATORS**	

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant has carefully reviewed the preliminary Office Action dated April 2, 2008. In response, the invention of Species I (Figures 1 and 2 and corresponding claims 1-5, 7, 12, 13, and 15-17) is hereby provisionally elected for prosecution with traverse.

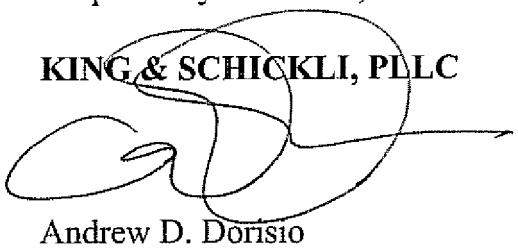
Traversal is made on two grounds. First, the Examiner fails to apply the proper requirement to the above-referenced national stage application. As MPEP §1893.03(d) explains, "Examiners are reminded that unity of invention (not restriction practice pursuant to 37 C.F.R. 1.141-1.146) is applicable in international applications (both Chapter I and II) and in national stage applications submitted under 35 U.S.C. 371." However, the Examiner simply states that the species are "independent or distinct." Thus, the Examiner fails to provide any reason or cite even a scintilla of ***evidence*** in support of a reason for restriction for lack of unity of invention. Given the Examiner's failure to indicate to the contrary, it can be presumed that unity of invention exists. Therefore, restriction is improper. *See* MPEP §1893.03(d).

Secondly, the reason that the Examiner does provide is not a proper basis for restriction for lack of unity of invention. In support of the finding that the species are "independent or distinct," the Examiner states that "the different species recite mutually exclusive characteristics of such species." The Examiner also asserts that "an examination and search burden" exists. However, nowhere do the PCT, MPEP, or rules indicate that restriction for lack of unity of invention is proper simply because claims recite "mutually exclusive" characteristics or because "an examination and search burden" exists. Indeed, the PTO has indicated that a single class and subclass (47/69) applies to the claimed invention. Accordingly, the reason provided does not justify any finding that the claims lack unity of invention.

As it is believed that this response addresses all issues raised in the Office Action in accordance with 37 C.F.R. Section 1.111(a), the examination of all claims is respectfully requested.

Respectfully submitted,

KING & SCHICKLI, PLLC



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